IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL UNDER SECTION 109 No 10 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CADILA CHEMICALS LTD.

Versus

IPCCA LABORATORIES LTD.

Appearance:

MR RR SHAH for Petitioner

MR MJ THAKOR with MR PP BANAJI for Respondent No. 1

MR AKSHAY H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/11/2000

ORAL JUDGEMENT

The appellant-Cadila Chemicals Ltd., in this appeal, filed under sec. 109 of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as 'the Act') challenged the order dated 22.12.1994, Annexure-E, passed by the respondent no. 2 - Assistant Registrar of Trade Marks, dismissing the Interlocutory Application No. 493664 filed by the appellant.

The appellant is a limited company organized and incorporated under the Companies Act, 1956 and is engaged

in the business of manufacturing and marketing of pharmaceutical and medicinal preparations since long. It is the case of the appellant that it conceived and adopted the trade mark as early in the year 1987 and applied to the Directorate of Drugs Control Administration, Gujarat State for the permission of manufacturing a drug. The appellant filed an application for registration of DOMPERON Trade Mark under Application No. 493664 in Class-5 as on 30.6.1988. The said application was accepted by the respondent no. 2 and was advertised in the Trade Marks Journal No. 1037 dated 16.8.1992 at Page 539. Thereafter, the respondent no. 1 lodged a notice of opposition to the aforesaid application of the appellants. It is the case of the appellant that the respondent no. 1 was required to file their notice of opposition on or before 16.11.1992 i.e. 3 months time from the date of publication of the advertisement of the appellant's application for registration. The respondent no. 1, however, sought extension of time for one month by filing a request on Form TM-44 by giving a reason as under:

"We were busy with some other urgent work hence we have not been able to file the opposition earlier."

The said Form TM-44 was filed by their Attorneys under their signature giving the aforesaid reason. It appears that the respondent no. 2 before whom the said proceedings were pending, allowed the said Form TM-44 and proceeded further with the opposition proceedings. The appellant, thereafter, filed Interlocutory Application dated 1.1.1994 before the respondent no. 2. As stated above, after hearing the parties, the respondent no. 2 dismissed the said Interlocutory Application on 22.12.1994, which is challenged in this appeal.

Reading the said order passed by respondent no. 2, it is clear that the respondent no. 2 did not find the reason given by the authorised agent of respondent no. 1 as an unusual one and on the contrary they were sufficient for the purpose of allowing the application filed by respondent no. 1 by extending the statutory period of three months to further one month under the provisions of Sec. 21(1) of the Act.

Mr. Thakor learned counsel appearing for the respondent no. 1 raised a preliminary objection regarding the maintainability of the appeal. In the submission of Mr. Thakor, an appeal lies to this Court

from any order or decision of the Registrar under sec. 109(2) of the Act, and since no final order is passed by the Registrar, the present appeal against the interlocutory order passed by the respondent no. 2 is not appealable and, therefore, not maintainable. To substantiate the submission, my attention has been invited to the decision of Delhi High Court in the case of M/s. Ratan & Co., vs. P. Narayanan, reported in AIR 1977 Delhi, p. 93. The Delhi High Court after considering the various decisions of the Supreme Court in para-18 of the judgment, observed as under:

> To my mind the object of Section 109(2) of the Act is to give a right of appeal to a party aggrieved by some order which affects his right or liability. The words "from any order or decision of the Registrar under this Act" though very wide do not include interlocutory orders which are merely procedural or processual and do not affect the rights and liabilities of the parties. The legislature could not have intended that the parties should be harassed with endless expense and delay by appeals from such procedural orders. It is open to a party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding."

While agreeing with the view expressed by the Delhi High Court, I am also of the opinion that the order granting extension of time is not appealable under sec. 109(2) of the Act. When the respondent no. 2 extended the time is not passing the final order but merely passing the order extending the time under sec. 21(1) of the Act. Needless to say that it would affect the rights and liabilities of the parties. I, therefore, uphold the preliminary objection raised on behalf of the respondent no. 1. In this view of the matter, it is not necessary for me to go into the merits of the case. In the result, the appeal fails and is dismissed with costs. Interim relief granted by this court is ordered to be vacated forthwith.

(K. R. VYAS, J.)

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